

**Resolve, Chapter 140
Integrating Water Supply Protection in the State of Maine's Vision
Senator Inn, Augusta
October 26, 2006**

What brought you back?

- I've been reading the notes and materials and there is a municipal component here.
- Came back because the work is worthy of doing and am appreciative of the process to come to the point. The atmosphere is one that encourages participation. Maine Forest Service knows that forestry is a compatible land use for protection of water supply.
- I think the issues here are important for both water supply and landowner interests.
- This is an important issue that I want to follow through on.
- I want to relay the opinions of our board to the group.
- Staying involved because I have been involved in several related group processes dealing with water resources. Want to see what conclusions can be reached and to provide the Legislature an opportunity for support. Curious to see the outcome.
- Our public and private water supply is under controversy. There is a lot of independent and private activity on water use and protection.
- An important issue that interconnects with other issues which are on going.
 - I think there are some opportunities for Land for Maine's Future projects to be useful in protecting water supplies and that these opportunities are properly balanced or integrated with LMF's primary mission of providing recreational access.
- Representing my department's interest to maintain compatible uses. Coordinating with a number of other ground water and surface water dialogues that I am participating in.
- I am curious about what has been going on. Protecting public health by protecting our public drinking water.
- Want to get caught up with the process. Ellsworth water supply has been going through changes and this is critical to our success as well as smart growth zoning issues.
- I am encouraged by this effort because it was too easy for activities to occur that would adversely affect our drinking water supplies.

Recommendation 1

Establish consistent policies among all State agencies to enhance source protection in all state decision making, development, and practices.

-So, would you be also including some of the answers to the questions or recommendations to them? (yes)

-When you get back up to the upper part for Inland Fisheries, we also provide technical assistance to DEP in evaluating applications. How it plays out across all of the agencies with MOUs and regulations, there is a lot there. (The details could take a year or so to work out.)

-If we are going to consider treating water supplies as protected natural resources so it has the same importance as other natural resources, so that there are certain standards that have to be addressed. (This is the kind of thing that could flow out of the commitment to having a unified state policy.)

-How do DOT's activities affect ground water supplies? Should they be included as part of the mix? (Yes)

-Implementation of how this might work, but I look at the first question to be answered, mitigation means that these things would happen, so how would these be addressed. Is there an alternatives analysis that should be conducted before we consider mitigation? In a recent application, the water district has had to do an alternative analysis before installing a dock. In the course of putting things together, we found a different way to develop the dock that didn't require driving piles. (That might mean reworking the "therefore" to include alternative consideration. We don't want the next generation to wonder what we meant by that.)

-Is there a companion piece for municipalities to consider their actions? (What can a state do to provide additional protection?)

-Are municipalities held at the same standard as others? (yes)

-All state agencies shall explicitly consider the impact in consultation with other state agencies...drinking water and DEP...trying to avoid tunnel vision. Prompt decision making with other dept. in the state without having a negative affect. Using language that allows districts to acknowledge and respond to changes. (Finding the balance between your job and everyone else's job.)

-Two things, one is it clear to all agencies that the resource is what we are working on here and is there a way to devise some sort of the filter that would overlay these concerns on their workplans so it provides awareness and planning ahead to protect the resource. (Every agency has work plans they have to prepare but...but that is the end state we are hoping for, we work through implementation at a state level then work into the work plans.)

-I recall when the ADA came out, whenever a work plan was developed, they had to follow specific questions to aligned with the plan.

-Is there any reason why some of the criteria of NEPA couldn't be used? (I have to some extent. A lot of our decision goes through this review. Whatever action you are taking has impact. It forces a level of review and discussion.)

-All federal agencies were required to review their regulations that could impact the environment, and there were 3 bullets that maybe some of these could be brought in.

-Recommendation 1: it is not clear if the state is following the recommendation under recommendation 3. I don't see "prohibit actions" here. (The intent was that this was the big picture umbrella. Under that there is a series of choices under 2 and 3. There are a bunch of state and local choices we need to make.)

-I can see the wording...where depending on the outcome the outcome of Rec. 3. (Refine the "whereas")

-Protection of future water supplies...how to address this and plan ahead. (There is a level of protection for future sand and gravel aquifers and does prohibit detrimental activities on top of them. The state has taken steps in this as well as some towns.) Is it a layer of a compressive plan or a requirement? (Some towns have taken it to the zoning level.) Is that a consideration for future planning efforts? (We could feed our desires into the State Planning Office process. I have had discussion with folks at SPO but I think that could be one of the outfalls of this level of public water supply planning...how to implement comprehensive planning.)

-What makes something a potential future water supply? Would any and all be considered at one or how would it be done? (Need a local and regional decision to set it aside and there a few places where there might be many places and some others that may have none.)

-In some towns if you were restricted to prohibit activities on an aquifer, it would leave little space for anything. Also, there are places where there maybe only one place.

-I find it out of place in Recommendation 1, so why would it be in Recommendation. 1? So why does the state have to or not protect public water supply. Can we agree to protect the ones we are currently using?

-Water suppliers know they need to maintain a margin of safety and some have identified future supplies. These plans are periodically updated. (PUC does require some level of planning. Some places do it, but we ask them to have a plan.)

-Any planning does not become requirement for protection.

-Water supply plans (in other states) come with a level of protection for future resources.

-Is it safe to assume to be all ground water or there is a surface supply. (Nearly all would be ground water.)

-Verbiage around aquifers, when there are restrictions on underwater storage tanks, what does that pertain to? (Ten gallons of water per minute. We can't map the bedrock aquifer in the same way.)

-Every town identifies significant sand and gravel aquifers. They are already on their radar screen now. As far as protecting future water supplies, we haven't addressed it yet. Contingency plans will require them to identify future water supplies. I think we are going to have to address this and report back to EPA in the next few years.

Recommendation 2

Create an effective program to maintain agricultural and forestry land uses in source protection areas.

-As more of a mechanical matter, down in the possible implantation of the Manure Management program, there is nothing in a sense now that prohibits us from doing this is to do through some administrative process to fold some sort of water source protection into that. There may be a more surgical way to get at this question. (There are already things happening that are good but we just want to nurture them.)

-When I read this the first time and add agriculture and forestry, I think walking trails have a lesser impact, but a well managed farm would as well. Conservation easements discussed with people got a positive response especially if the property became publicly available. Preserve rural character, provide recreational opportunities and protect water supplies. The "Land for Maine's Future Program" has been successful, but I don't think that it has to be that the water supply protection has to be through that program, but it makes it more than a good thing.

-Forestry issues, there are times when parcels are undeveloped, has there been a thought process on making the standard smaller or open space option, would there be any avenue for land owners to lump their property together to get into the tree growth tax reduction program? Folks would like to get a tax break to put their smaller parcels into undeveloped tree growth.

-One of the premises is to reduce taxes is that parcels and tree growth to have a forest management plan having a harvesting plan. Parcels under ten acres are difficult to achieve that without over cutting. Cooperative joining of parcels is interesting if the parcels are contiguous if they were to come under one plan, but in the future if land transactions occur it may have an impact at the individual level.

-Open space taxation might be an alternative.

-This might be of importance especially if they are over a ground water source.

-Is there a tax incentive for open space? The benefit is tiered.

-There is flexibility with towns on open space.

-Tree growth valued is rigid, but open space is more flexible.

-If you are trying to blend those objectives, just use the permanent option of open space. If they all agree to a conservation easement, I think that it gets more complicated with forestry. There are a fair amount of other administration issues. The next landowners could be an issue.

-Some people would be reluctant to the permanency of open space. A plus for tree growth...

-5 years of protection is better than none.

-I wonder in local zoning you may have some land that you can't do anything with already. For example the land with in a group of homes in a development.

-Maybe having a road owners association, so that a small percentage of their taxes come back to their association for road improvement. Maybe provide incentive this way.

-Under possible implementation the second line down you close that with green certification is like a procedure. Certification has limited value to land owners. Technical assistance for sustainable forestry is a better term.

-Provided a dedicated bond base fund. Are there other ways to get funding other than bonding? It seems problematic. If people are getting the water supply then maybe they should be ...some sort of fee to protect that land added to their bill.

-PWS's do have the ability to set aside contingency funds.

-I would encourage you to think of public water supplies as statewide water significance. You benefit on a daily basis because the public water supply is available for commerce and industry. I look at other states that appropriate money to buy land every year. It is more forward looking to protect the major water supplies...to limit and provide more benefit overall to everyone.

-I wouldn't be opposed to have additional costs added to my bill for added protection of water supply.

-The water districts need to be part of the process, but they are resource limited.

-Does the PUC limit public water supplies from doing revenue bonding to protect its water supply?

-You don't get rates until you spend the money. Some systems are going into step rates.

-The Portland Water District watersheds' fund, we spent nine hundred thousand to buy an acre of land to protect the watershed. We couldn't make a dent in the process of buying the Sebago Lake watershed for protection.

-PUC rule that is limiting how much public water can buy to do water shed protection? It is the issue of priorities, it becomes a matter of what do we spend our money on? There just isn't enough money to do everything.

-Amend Manure management...I am not sure what we gain there, farm land...
(Maybe the amendment is that we have to find the money to do this.)

-Right to farm comes out and manure management stays? It is whether or not you want to the additional restrictions on it.

Recommendation 3

Mitigate the effects of existing and new development on drinking water quality through the use of education, incentives and enforcement.

Shoreland zoning revisions:

-Would there be an expansion of shoreland zoning to include streams near the intake?

-There are lost of small little streams. (It is unusual for an intake to be close enough to shore so that the 1,000 foot zone extends more than 250 feet onto the shore.)

Diagram: Intake with 1000-foot radius, what we are talking about is there is a 250' and 75' shore land zone, if this 1000-foot expanded beyond it, what would be the benefit and cost of this? I could see if there are any of these pertaining to the 52 intakes. Is there a real world example of this? If you look at inlet streams, there are enough inlets that we could not do it. The inlet streams to Sebago, for example.

-Increase the mandatory zone to 250 feet is another possibility.

-I can see this might be significant elsewhere.

-If these are beefed up in the foot notes things like "52 intakes".

-I felt that the detail was missing. When issues came out, the scope of them came out, it seemed like that it could be useful in debate.

-Have a reason for zoning.

-If there was one page where there are facts listed about the specifics. Good framing would be useful.

-A map of Maine with water supplies and they could be numbered and use this as a reference using the data from GIS. This can be useful for debate.

-What is the origin of the 1000-foot radius? Administratively, it is to keep this as straight forward as possible.

Number 2

-Explain what the implications of this (including public water supplies as protected natural resources) would be just on surface water supplies? (No, both.) So if you only include them? How would the exiting standards work?

-NRPA there're is a notification requirement to the public water supply so the supplier can comment. If it considered to be a protected resource, then would the exiting standards apply, then there is jurisdiction area around the resource. Water supplies are considered a state level protection of supply. So it can be done as simply as that. Right now that is broad enough...for DEP to use the exiting standards...

-Great ponds already covered?

-So this would only affect ground water supplies. In theory, so the assumption is that there would be stricter scrutiny to those activities.

-Who could protect the activities, but are great ponds, so are ones being used as public water supplies being treated differently that one that is not? No.

-What is your latitude for scrutiny in this situation for dredge spoils? What is the guidance to us as the agency?

-All our discussion has focused around surface water, so how does this affect ground water? Default zones protect all ground water supplies, most are 300 feet. Do we want to put all 2,155 water supplies under this?

-We need to be clear on the definition. It is a 300 feet radius for more than 250 people for ground water.

-What typically is allowed within the 300 feet and what activities can get permits within the 300 feet? For ground water, we don't have permitting. The same activities that affect surface water may not be the same as those that affect ground water.

-Model municipal ordinance, do we look at what is or is not allowed? Look at the ordinance.

-I would like to see the numbers. Are the standards clearly referenced? Ordinance language somewhere, user friendly.

-Does DEP address ground water contamination under site law? (Yes)

-I need to communicate and get the feedback and I need to write this up and send this out to the towns, so the information needs to come first so they can make decision.

Numbers 3 and 4:

-The atlas, each town could have a one-pager, there needs to be a common ground that everyone can understand. The possible implications of NRPA.

-This only shows current natural resource areas.

-If you see an area that is in red, you would need.... so it would be easily for them to see what they can or cannot do in that area.

3.3 or 3.4

-This could be an either or NRPA protection of resources, can DEP manage the protection. I see potential overlap in local ordinance and NRPA permit.

-It is an overlap from the DEP perspective. You don't do both.

-Neither NRPA or local... (verbiage)

-What does it mean to be protected by local ordinance? Which of the two models is preferred?

-If NRPA were applied comprehensively, then direct local participation is not needed? Over time what is the impact of a number of projects that don't need NRPA? What does it take to trigger NRPA at a statewide basis?

-Draining or otherwise dewatering wetlands.

Filling, adding sand or other materials, alteration of the soil.

There are individual permits for major activities and permit by rule.

Single-family residences could fall under permit by rule.

-Primary risks are septic systems and heating oil tanks. Permits by rule model here are the maps for each. I have to send in the notification, and as long as I am following these standards I can do it. If it were a bigger activity, it would need a full blown permit. Would it be better for the state or the towns, in some cases the town is better because they have a code office to observe these activities, sometimes not as effective. There are pluses and minuses in each situation being state or town level.

-Small towns while they would like to see some sort of protection they would fall more in the sentiment of letting the state do it as they have enough to do already.

-Language 3.2: Develop a plan to target enforcement (prioritize enforcement or increase compliance)

-State or municipal jurisdiction, protection from contaminants and level of technical expertise, and the level of case by case, smaller districts may not have resources to call upon. Risk assessment to allow a number of residents treating lawns what are the risk factors and who has the expertise to evaluate this? (My underlying goal is to put a floor on protection not a ceiling. There are many places not doing much so a statewide system could include the 80 percent not doing anything. There needs to be a way to make a difference. To recognize importance of the resources in their own towns that need managing.)

-Towns will still require building permits, so within this area you will recognize that it is a public water supply and give it an additional level of scrutiny? (Yes, there would be a zone that additional review would be applied or a certain level of standards.) If it were a protected resource by NRPA and at the state level or would it be permit by rule or permit by standards. (If either state or town applies standards, then they both don't do it. The town could issue the permit and there would not be an additional permit from the state.) Local control since they are already doing the permits. What is the additional benefit of having the state involved?

-Putting a floor under protection is what is important now. Many towns have none so we can establish this and they would have this to follow. There are standards that the state or the town can take over responsibility, there would be a choice. If the state has standards then there could be permit by rule. It seems pointless to have multiple levels of review. The town has the choice to review or pass it to the state.

-I think the towns would look closer at the maps if there is protection and permits were required.

-With ground water areas the towns are notified of our jurisdictions, some people are not going to know. It doesn't look like other areas.

-Don't the standards need to be different if it is a drinking water source, besides have a protected resource? Are the standards for any body of water sufficient for drinking water supply? (I think so, if they were strictly enforced. We need to work harder on the ones we have to drink.)

-Common theme: When you roll out all of the exiting laws etc., it give the impression we don't need any new, but how well and can they be enforced. The true protection ...is the reality. This might not be the end of the world; you are in a drinking water supply watershed.

-Under NRPA permitting for great ponds, you give water quality certification...does it maintain water quality for public water supply? There is not enough guidance and statute, but overall I think it is minimal.

-NRPA review by the DEP instead of the local municipalities, because of capabilities and level of expertise. DEP could give a focus that may not be available at the municipal level. The level of focus is more than at the local levels.

-A town manages the town's land and water use and in another situation, a municipality may be overseeing many areas without authority to do anything. DEP enforcement would be my preference over local.

Implementation options:

PL 761 option feedback –

-I think the burden of proof should be on the landowner to show that they are not doing anything harmful.

-The public water supply was treated like being an abutter. This recommendation that that is a requirement that the water utility be notified, but there is no guarantee that the water utility was notified. They could at least have input if they know what is going on in the area.

-If the existing system didn't work, what about having the developer send the information to the water utility and to receive the notice from the water utility.

-Having a sign off sheet to show that you have done what you need to do.

-It is allowed, but whether or not you have to get a sign-off is up the municipality.

-You could have it but you have to show that you went through the process. Does the process work, the simple notification process?

-I think it would work. The letter would be needed before going to the planning board. They would be aware of what is happening in the area; kind of like "access by permission only".

-761 says that you must tell the water utility of potential activity.

-Would this require statutory changes at the town level? (No, you would need one to require towns to have to comply with it.)

#2:

Require written acknowledgement

-I know I am in it and this is what I doing to protect it.

-Is there any disagreement?

-If there is an itemized check off, people might not know what they are agreeing to.

The comments on one, a lot of them are either or, but 761 put the burden on the municipality, but then it is suggested to put it on the developer. The utility and municipality are now working together. They are both waiting on the developer to show the notification. Putting the burden on the developer makes more sense.

-Is there a requirement for disclosure in terms of real estate? There are specifics that are needed to be included. Notification about what is allowed in these areas. It isn't local zoning, but it is NRPA jurisdiction, showing disclosure at transfer.

-What is required now and where do they come from as far as notification? And not much is required by state law? Radon is not required by state law? Flood zone?

-The developers oppose including more disclosers on the transfer. Shifting the "buyer beware" to the seller versus the "buyer beware" option.

-NRPA check off list would practically be needed each time a transaction occurred.

-How would they know the requirements now, it would have to be in the local ordinance. This states the developer would need to know there in order to do business.

Local ordinance option:

-If we assume that we want to establish a floor of protection, who would prefer to see it at a local or state level?

Local: none

State: half

Opposed: 1

No opinion: about half

Hybrid option:

-The idea is that the state would set standards they would have to be follow by the towns could administer or state could. NRPA model; or like it. State could administer the rule or could pass it on. This is a subset of state law. The legislature establishes that there should be protection.

This option is different from a model by-law.

-Under the local adoption, if the utility is unsatisfied that the town is enforcing the state standards, could DEP could intervene if there would be lack of local enforcement? I don't think

there is formal intervention authority. Can't the board be petitioned to review the actions of the town?

-Shore land zoning, to require the towns to send notice of any applies to the state so that the state may intervene at the appeals level. This model could have a model where this at the lower level.

-This would be where the utilities could get support to see that the standards are held without going through the town's authority.

Proposing two pieces:

-NRPA site location at state level for ground and surface water

-Informed consent notification to put burden of notification on the developer with an option to sign off on possible hazards.

-Included in the state umbrella is that the locality can go beyond the state recommendation. This is a state minimum and you can do more in terms of protection.

-Is the state umbrella on pg. 4 similar in detail to the local ordinance stuff on page 6? It is very similar. The implication for enforcement will be different. There are the concepts that go at either level.

Feedback on the process of doing it this way, was it useful? (4 meetings)

I learned a lot and we can get we can get.

This worked and this was a better solution.

Good process.

Good opportunity to make and get points of view.

Good information.

This was the first time she sat in a room where anything was getting accomplished.

I liked the four meetings.

I appreciated the beginning and ending.

I think we did a good job in a short amount of time.

The notes were great and the materials on-line were great. I have a level of ignorance here, so dumbing some of it down would help. I don't know how to explain it to others, but I now know what is not being dumbed down. Problem and impacts of doing it is not clear.

I think it went well.

A reflection of the work you did between meetings.

Screening level but there is a lot of detail left.

We will be working over the next few weeks on a draft of recommendations and resource materials.